IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.555 OF 2006

Beautiful Jewellers Pvt.Ltd. ..Appellant.

V/s.

Tiffany & Co. ..Respondent.

Mr.Rafeeq Par Mohamed with Prakash Shinde a/w. Mr.Nisul Dhruva i/b M/s.M.Dhruva & Co. for appellant.

Mr.P.K.Samdani i/b. Wadia Ghandy & Co. for respondent No.1.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 31, 2006.

P.C. :

1. Heard counsel for the parties.

2. Admit.

3. Mr.Samdani waives notice for respondent.

4. As short question is involved, appeal is taken up for final disposal forthwith by consent.

5. This appeal from order takes exception to the Judgment and order passed by the City Civil Court, Bombay dated June 13, 2006 in Notice of Motion No.974 of 2006 in S.C.Suit Stamp. No. 2620 of 2005. For

the nature of order that I propose to pass on the basis of submission canvassed by the counsel for the parties across the bar, it is not necessary to advert to the factual matrix of the case leading to filing of this appeal.

6. Suffice it to observe that the suit instituted by the appellant has been dismissed by order dated 20th February, 2006. The appellant took out Notice of Motion No.974 of 2006 for restoration of the said suit, which application has been rejected by the impugned Judgment and Order. One of the reason for which the appellant intended formal restoration of the suit was that the appellant wanted to withdraw the suit, so as to enable them to file substantive suit for the same cause of action or for appropriate reliefs, as may be advised or as may be permissible by law. In so far as this ground is concerned, counsel for the respondent/defendant submits that if this is the only purpose for formal restoration of the suit, respondent shall have no objection for formal restoration of the suit, but with clear understanding that after restoration of the suit plaintiff will proceed to withdraw the suit and not on merits of the suit in any manner.

7. Counsel for the appellant on instructions states that if the suit is formally restored to file, the appellant will take steps before the trial Court by way of formal application for withdrawal of the suit and not proceed with the suit on merits in any manner. On the basis of assurance given by the appellant, the appeal is allowed in the following terms.

8. The suit instituted by the appellant being S.C.Suit Stamp No.2620 of 2005 is formally restored to the file of the trial Court by setting aside the order of dismissal thereof dated 20th February, 2006.

9. The appellant assures through counsel that the suit so restored will be withdrawn by taking out formal application before the trial Court within two weeks from today. That assurance is accepted.

10. The trial Court shall decide the application for withdrawal of the suit on its own merits, in accordance with the law. All question in that behalf are left open.

11. Appeal disposed of on the above terms.